

The Senate

Foreign Affairs, Defence and
Trade Legislation Committee

Additional estimates 2004–05

March 2005

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Senate Foreign Affairs, Defence and Trade Legislation Committee

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Senate Foreign Affairs, Defence and Trade Legislation Committee

Report to the Senate

Introduction

1. On 10 February 2005, the Senate referred to the Committee for examination and report, the following documents:

- particulars of proposed additional expenditure for the service of the year ending 30 June 2005; and
- particulars of certain proposed additional expenditure for the service of the year ending 30 June 2005 relating to the Defence portfolio and the Foreign Affairs and Trade portfolio.

2. The Committee has considered the proposed additional expenditure for the year ending 30 June 2005. It has received evidence from Senator the Hon Robert Hill, Minister for Defence, and Minister representing the Minister for Veterans' Affairs, the Minister for Foreign Affairs and the Minister for Trade, and relevant officers of the departments and agencies.

3. The Committee met in public session on 16–18 February 2005. Further written explanations provided by departments and agencies will be presented separately in volumes of additional information. This information will also be placed on the Committee's internet site (www.aph.gov.au/senate_fadt).

Questions on notice

4. The Committee resolved that written answers and additional information should be submitted by close of business on Thursday, 31 March 2005.

Overview

5. The only noteworthy procedural matter arising from both days of additional estimates hearings concerned Minister Hill's support for a refusal to answer a question about the mode in which a communication occurred between an official and the Foreign Affairs Minister's office.

6. Senator Hill, Minister representing the Minister for Foreign Affairs, informed the Committee that if he had found that an official was uncomfortable with providing an answer, he would protect that officer if that officer had a reasonable justification. In this case, the Minister was of the view that the officer did have a reasonable justification for not answering the question—the privacy of communications between an official and his minister.¹

1 Proof *Committee Hansard*, 17 February, 2005, pp. 46–48, 50.

7. During budget estimates in June 2004, the Committee expressed concern about the lateness of answers to questions on notice from that round. The Committee again made note of the lateness of answers, this time in relation to the supplementary questions arising from budget estimates. At the time of these hearings most questions were outstanding, and as at 7 March 2005, 308 questions remain unanswered across all departments and agencies.

8. The hearings are summarised as follows in the respective portfolio overviews in the order that they were examined by the Committee.

Defence portfolio

Department of Veterans' Affairs

9. The Committee acknowledges the presence at the hearings of Mr Mark Sullivan, Secretary, and officers of the Department of Veterans' Affairs.

10. Issues that were discussed are listed below.

Portfolio overview

- The lateness of questions on notice from earlier rounds (pp. 5–6).²
- ANAO report no. 15: special appropriation under the Compensation Act for administrative costs (pp. 6–7).
- Technical difference between two compensation acts (pp. 7–8).
- ANAO report no. 21: Defence Service Homes Insurance Scheme (pp. 8–10).
- Investment on the money market of \$56.6 million (pp. 10–11).

Outcome 1

- Funding for the Building Excellence in Support and Training (BEST) program (pp. 11–12).
- Funding for the Training and Information Program (TIP) program (pp. 12–13).
- VEA s.24 (Special Rate Pension) decision-making; reduction in the number of approved special rates claims (pp. 13–15).
- Deseal–reseal project: study of health outcomes for aircraft maintenance personnel (CHOAMP); compensation issues. (pp. 15–17).
- Defence Forces Income Support Allowance (DFISA) (pp. 17–18).
- Sleep apnoea (pp. 18–19).
- Data matching: death notification and overpayments (p. 19).

2 Transcript page numbers for the Department of Veterans' Affairs hearings refer to the *proof Hansard*, 16 February, 2005. (See the index at back of this report.)

- Administrative review and health administration (p. 19).
- Solomons peacekeeping operation and AFP personnel (p. 20).
- Exposure to Beryllium and the statement of principles (pp. 20–22).

Outcome 2

- Veterans' hospital and health services: other health care (pp. 22–23).
- Health care partnering arrangements (p. 23).
- Gold card: dental care and specialist care for veterans; specialists' fees (pp. 24–28).
- Home care: funding and program operation over four years (pp. 28–29).
- Quinine: restriction on use by veterans (p. 30).

Outcome 3

- Commemoration budget (p. 31).
- Overview of the major commemoration projects in 2005 (pp. 31–34).

Department of Defence

11. The Committee acknowledges the presence at the hearings, of Mr Ric Smith, AO, PSM, Secretary of the Department of Defence, and Vice Admiral Russ Shalders, AO, CSC, RAN, Acting Chief of Defence Force. At the invitation of the Chair, the Secretary made a statement on Defence financial matters (pp. 35–36, 128–129). The Minister then made a statement to the Committee about the Iraq Survey Group (ISG) (pp. 36–37).³

12. Matters raised by the Committee included:

Portfolio overview and major corporate issues

- ISG personnel: Mr Barton's employment arrangements: duties, terms and conditions; non-ongoing employment terms and conditions; duty statements (pp. 37–41, 43, 95–100). Mr Barton's resignation and interviews arising from the resignation (pp. 59, 61, 63, 67; 18 February 2005: pp. 21–23).
- Terms of reference for the ISG (pp. 42–43). Activities of Australian ISG personnel; general instructions and guidance; concept of operations (pp. 44–47, 63, 74–78, 80–81).
- Questionnaire pro forma completed by Australians in Iraq and initial and subsequent interviews (pp. 47–55, 57–62–69, 85–87, 90–95, 101–102, 107–109).
- ISG fact finding report to the Minister (pp. 51, 56, 62, 102–106).

3 Transcript page numbers for the Department of Defence hearings refer to the *proof Hansards of* 16 February and 18 February, 2005. Each transcript starts at page 1. (See the index at back of this report.)

- Formal communication with United States Ambassador about findings in Iraq (pp. 60–62; see also 17 February 2005: p. 29). Submission to the US Deputy Chief of Mission (pp. 65–67; see also 17 February 2005: p. 29).
- Definitions of 'interview' and 'interrogation' (pp. 71–72, 75, 78–79, 88–89).
- Joint interrogation and debriefing centre (JIDC) in Iraq: operations by US and Australian personnel (pp. 72–75, 80–84).
- Geneva Convention (p. 85).
- Weapons of mass destruction and biological warfare (pp. 90–91).
- Camp Cropper (pp. 100–101).

Budget summary (financial statements and improvement initiatives)

- Financial statements: Secretary's statement (pp. 35–36, 128–129). Deterioration of inventory systems; remediation and reform work—identification of problem areas and proposed remedies; the Gantt chart (18 February 2005: pp. 3–18).
- Review of all corporate governance activities (18 February 2005: p. 18).
- Sampling techniques (18 February 2005: pp. 18–19).
- Consultants in the AR; professional service provider (PSP) (18 February 2005: pp. 23–26).

Capital budget—major capital equipment

- DMO: Critical safety inspections on the guided missile frigate HMAS *Sydney* ADI investigation (pp. 117–119).
- DMO: future accounting and auditing systems (pp. 20–21). Separation from Defence to an autonomous entity; Kinnaird report; Chief Operating Officer Division; financial remediation (18 February 2005: pp. 32–34).
- DMO: tender process for air warfare destroyers and amphibious ship manufacture. Upgrading of RAN's six missile frigates; combat system software package; Seasprite project (18 February 2005: pp. 34–41).
- DMO: Air-to-air refuelling (18 February 2005: pp. 42–43).

Outcome 1—Command of operations

- Deployment of the *Kanimbla* (pp. 115–117; 18 February 2005: p. 26).
- Joint offshore protection command; patrol boat days (pp. 113–114).

Outcome 2—Navy

- Sea King helicopters (p. 116).
- Navy rescue submarine *Remora* (pp. 119–120).
- Toxic drinking water aboard six Collins class submarines (p. 121).
- Running aground of HMAS *Ballarat* (pp. 121–122).

Outcome 3—Army

- Alleged war graves at Fromelles in France (pp. 122–124; 18 February 2005: p. 26).
- 'Stolen' weapons (pp. 125–126).
- Progress of Lieutenant Colonel Collins's redress of grievance action (18 February 2005: pp. 21, 25).

Outcome 4—Air Force

- F–111 Deseal/reseal project: compensation to affected ADF personnel (18 February 2005: p. 27).
- Nathan Moore: negotiated resolution of matters (18 February 2005: pp. 27–28).

Outcome 5—Strategic Policy

- 'Son of Star Wars' missile defence program (pp. 127–128).

Outcome 6—Intelligence

- DIO intelligence link to East Timor: denial of access to DIO's database by Australian forces in East Timor; Carnell report (pp. 95, 110–113).

Business processes*Corporate services*

- Allegations of asbestos at Puckapunyal army base (pp. 124–125, 127).
- Property disposals: Broodseinde barracks, Ballarat; defence estate in Maribyrnong, Victoria (18 February 2005: pp. 28–31).
- West Australian Medical Board and Dr McKenzie (18 February 2005: pp. 31–32).

Foreign Affairs and Trade portfolio

Department of Foreign Affairs and Trade

13. The Committee acknowledges the presence at the hearings, of Mr Doug Chester, Deputy Secretary, and officers of the Department of Foreign Affairs and Trade.

14. Matters raised by the Committee included:⁴

Portfolio overview

- Iraq: update of the security assessment of Iraq; 'anti-Iraqi' forces (pp. 3–4).
- Security assessment and arrangement for the safety of Australians in Iraq; embassy accommodation; escorts (pp. 4–20).
- Weapons of mass destruction monitoring inside Iraq (p. 20).
- DFAT's involvement with the Iraqi Survey Group (ISG). Iraqi Task Force meetings (pp. 20–25, 45–46).
- DFAT's knowledge of suggestions of prisoner abuse or mistreatment at Camp Cropper; International Committee of the Red Cross (ICRC) report (pp. 26–27).
- Mr Barton's contact in Iraq with the Australian Representative office (pp. 27–29).
- ISG reporting process (p. 28).
- Timing and content of DFAT's knowledge of a formal communication with United States Ambassador about the Barton allegations (p. 29. General issue also discussed at pp. 60–62, 16 February 2005).
- Timing and content of DFAT's knowledge of a submission to the US Deputy Chief of Mission, regarding the Barton allegations (p. 29. See also pp. 65–67, 16 February 2005).
- Method and timing of transmittal of information about the Barton allegations to the Minister's office (pp. 29–36, 38, 46–53).
- Meeting hosted by Defence to debrief Mr Barton, regarding the ISG and his resignation; degree of DFAT involvement in the meeting and any record arising from it (pp. 38–40, 53).
- Reporting and collecting data on civilian deaths in Iraq (pp. 63–64).

4 Transcript page numbers for the Department of Foreign Affairs and Trade hearings refer to the *proof Hansard*, 17 February, 2005. (See the index at back of this report.)

Output 1.1.1

- Expo in Japan: overall budget for the Australian pavilion; design, arts and entertainment budgets; meeting benchmark performances (pp. 45, 56–58).

Output 1.1.2

- Australia's tsunami aid package to Aceh; protection of the human rights of displaced people (p. 41).
- Governments, UN Bodies and NGO's to receive assistance from the government's aid package (p. 41).
- Australia–Indonesia Partnership for Reconstruction and Development (pp. 41–42, 44).
- Update on the progress of assistance in the tsunami affected countries (p. 43).
- Latest casualty figures from the tsunami: death toll, missing and displaced persons (pp. 43–44).
- Burma: Extension of the house arrest of Tin Oo (p. 44).
- Nepal: political state of affairs (p. 44).

Output 1.1.3

- Visit by HRH Prince of Wales to Australia in March (p. 59).
- Meeting of the European heads of missions (pp. 60–61).

Output 1.1.4

- Sudan: Australia's diplomatic involvement in dealing with the crisis in Darfur; crimes referred to the International Criminal Court (ICC). Deterioration of the humanitarian situation; role of the African Peace Union (pp. 61–62).
- Nauru: recent elections; assistance provided by Australia under the memorandum of understanding; status of agreement relating to processing centres for detainees and DFAT's role (pp. 62–63).

Output 1.1.5 and Output 1.1.6

- DFAT's assessment of Australia's export trade performance (pp. 88–93).
- WTO: update on development in the Doha Round; commitment to eliminate export subsidies; trade facilitation negotiation (pp. 93–95).
- Role of the US and role of European Union in the Doha Round (pp. 95–96).
- Cairns Group activity (pp. 96–97).
- G20 activity (p. 97).
- Position of Director–General of the WTO (p. 97).
- Update on regional trade arrangements (pp. 98–100).

Output 1.1.7

- Sudan: war crimes referred to the International Criminal Court (ICC) (pp. 61–62); process to empower the ICC to bring action against perpetrators of war crimes (pp. 68–69).

Output 1.1.8

- Maritime identification zone: the timing of the announcement and the impact on Australia's near neighbours (pp. 65–67).
- Conference of the parties for nuclear weapon free zones; nuclear cooperation treaty with China; requirements included in any agreement (pp. 69–70).

AusAID

- HIV/AIDS: Australian grant support for HIV/AIDS fight in Africa—Australian partnerships with African communities (pp. 70–71).
- Tsunami assistance: governments, UN Bodies and NGOs to receive assistance from the government's aid package (p. 41). Australia's work with Civil Society partners to re-establish structures and systems (pp. 71–72).
- Gross National product (GNP) assistance goal (p. 72).
- Australia's commitment to the overseas aid program (p. 72).
- Asia Pacific Leadership Forum: update on strategies to deal with HIV/AIDS (pp. 72–73); AusAID's role in the review of the National HIV/AIDS strategy; Australia's aid program in the Pacific and New Zealand's role in aid delivery (pp. 73–74).
- Donations by charitable organisations of goods to places experiencing humanitarian emergencies (pp. 75–76).

Austrade

15. Matters raised by the Committee included:

- Export advisers: their appointment, location and targeting of customers (pp. 76–77); cost of export advisers (p. 80). appointment of business development managers (p. 78).
- Government procurement market (p. 78).
- Free trade agreement export delivery panel (p. 79).
- Progress of co-location of Austrade and AusIndustry (p. 79).
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- Export hubs in various locations; AusIndustry and TradeStart offices (pp. 80–82).
- EMDG Scheme: additional funding (pp. 82–84).
- Net cut to Austrade's budget (p. 83).

- US–FTA: overall impact of the FTA on Austrade's business; Australian companies moving to the US as a result of the agreement (pp. 84–85).
- Export of Holden Monaros to the US; implications for Australian car industry (pp. 85–86).
- Australia's export trade performance; Australia's international competitiveness (pp. 86–87).

Acknowledgements

16. The Committee expresses its appreciation for the assistance given during its hearings by Senator the Hon Robert Hill, Minister for Defence. The Committee also acknowledges the attendance and cooperation of departmental and agency officers and the services of various parliamentary staff involved in the estimates process.



Sandy Macdonald

Chair

**Foreign Affairs, Defence and Trade
Legislation Committee**

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Reservation by Labor Senators

Refusal to answer a question

1. At the hearing on 17 February 2005, during questions relating to the Iraq Survey Group, an officer of the Department of Foreign Affairs and Trade indicated that he had made a communication by telephone with the office of the Minister for Foreign Affairs. Subsequently, the officer declined to answer further questions to confirm the mode of the communication. It is emphasised that the questions went only to the mode of communication, not to the content of the communication.

2. The officer did not give any reason for declining to answer those questions. The minister representing the Minister for Foreign Affairs, Senator Hill, supported the officer in his refusal to answer the questions, on the basis that, if the officer felt uncomfortable about answering the questions, he should not be required to answer them. Senator Hill also did not give any reason for a refusal to answer the questions, apart from speculating that the reason might be "the privacy of communications between the officer and his minister".¹

3. Over many years, going back to 1971, the Senate has passed, and reiterated, resolutions to the effect that officers do not have a discretion to decline to answer questions.² On 16 July 1975 the Senate resolved that it is for the Senate to determine any claim by the executive government to be excused from answering questions or producing any documents on specified grounds.³

4. On 22 November 1999 the Senate resolved, by adopting a report of the Procedure Committee, that all questions going to the operations of departments are relevant questions for the purposes of estimates hearings.⁴ Privilege Resolution No. 1 of the Senate, in paragraph (10), provides that, if a witness declines to answer a question, the witness should state the ground of the objection to the question so that the committee can consider the objection. Particularly at estimates hearings, ministers are expected to take responsibility for decisions about whether questions to ministers or officers are to be answered, and to state grounds for any ministerial refusal to answer a question.

5. It is expected that a refusal by a minister to have a question answered will be taken on a claim for public interest immunity, that is, that it would be contrary to the public interest to answer a particular question on specified grounds. This expectation is reflected in the resolution of the Senate of 30 October 2003, which provides that a claim to withhold information from the Senate or a committee on the ground of commercial confidentiality must be made by a minister and be accompanied by a statement setting out the basis for the claim.⁵

¹ *Proof Committee Hansard*, 17 February 2005, pp. 46–50.

² *Standing Orders and other orders of the Senate*, November 2004, pp. 134–136.

³ *Standing Orders and other orders of the Senate*, November 2004, p. 130.


⁴ *Odgers' Australian Senate Practice*, 11th ed, 2004, p. 367.

⁵ *Standing Orders and other orders of the Senate*, November 2004, p. 121.

6. It would be highly detrimental to the proceedings of the Senate and its committees if ministers were to fall into the habit of refusing to answer questions without stating any public interest grounds for such a refusal. It is equally undesirable that ministers should advance grounds unrelated to the public interest, such as that an officer feels uncomfortable with a question. It is perfectly reasonable for a minister to consider a question and subsequently report to the committee where the minister wishes to advance any claim for public interest immunity in relation to the question. It should not be acceptable for a minister simply to refuse to answer a question without advancing any public interest ground for such a claim.

7. It is therefore recommended that the Senate reiterate the following principles in relation to proceedings of its committees:

- (a) ministers and officers do not have a discretion to decline to answer relevant questions;
- (b) any refusal to answer a relevant question should be made by a minister on the basis of a properly advanced claim of public interest immunity based on specified grounds; and
- (c) it is for the committee in the first instance and the Senate ultimately to consider whether a properly advanced claim of public interest immunity is to be sustained.



Senator Steve Hutchins



Senator Sue Mackay